

(e.g., Firm-Fixed-Price, Fixed-Price-Incentive-Fee, or Cost-Plus-Incentive-Fee) is appropriate. However, when contractor performance (e.g., cost control, schedule, or quality/technical) is best evaluated subjectively using qualitative measures, a Cost-Plus-Award Fee contract may be used.

(b) A labor hour level-of-effort contract is not considered a performance-based contract.

PART 2938—2941 [RESERVED]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2942—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 2942.1—Contract Audit Services

Sec.

2942.101 Policy

Subpart 2942.15—Contractor Performance Information

2942.1502 Policy.

2942.1503 Procedures.

Authority: 5 U.S.C. 301, 40 U.S.C. 486(c).

Subpart 2942.1—Contract Audit Services

2942.101 Policy

The OASAM Division of Cost Determination is responsible for establishing billing rates and indirect cost rates as prescribed in FAR 42.7 for the Department of Labor.

Subpart 2942.15—Contractor Performance Information

This subpart provides policies and procedures for evaluating, maintaining, and releasing contractor performance information under DOL contracts.

2942.1502 Policy.

DOL contracting officers are required to use or interface with the National Institutes of Health's Contractor Performance System. The HCA is responsible for ensuring that a contractor performance evaluation system is generated to meet the requirements of FAR Subpart 42.15. Contracts, task orders, and delivery orders, exceeding the simplified acquisition threshold, should be formally evaluated in writing. Interim evaluations should be performed on contracts exceeding one year in duration. This will assist contractors with improving marginal performance and identifying any major deficiencies. It will also facilitate performance evaluations at contract completion, as

well as determining whether to exercise contract options, if any.

2942.1503 Procedures.

(a) In accordance with FAR 42.1502, the contracting officer will prepare an interim evaluation of a contractor's performance at least annually for submission to the Contractor Performance System maintained by the National Institutes of Health.

(b) The contracting officer, or designee, must determine who will evaluate a contractor's performance. The contracting officer's technical representative, program manager, contract specialists or administrators, and users are candidates likely to be selected to perform the evaluation.

(c) A Contractor's performance evaluation should be obtained from a person who monitored contractor performance, when that individual's assignment of duties or employment terminates before physical completion of the contract. The areas of performance to be selected for evaluation should be tailored to the type of supplies or services normally acquired by the contracting activities and the type of contract. HCAs must ensure uniformity of the evaluation criteria within their contracting activities.

(d) *Release of contractor performance evaluation information.* (1) Requests for performance evaluation information from the public must be processed in accordance with FOIA, as implemented by DOL under 29 CFR Part 70.

(2) Release of a contractor's performance evaluation information to other federal agencies is subject to FAR 42.1502. When the performance evaluation information is released to other federal agencies, it should be provided with a written statement that it is nonpublic information that must be processed under FOIA principles if a request for its disclosure is received.

(e) Even though the retention period for past performance evaluation information is three years (see FAR 42.1503), the contractor's performance evaluation, any contractor rebuttal, and final decision become a part of the contract file. Therefore, disposal of the contractor's evaluation information must be accomplished in accordance with FAR 4.804.

PART 2943—CONTRACT MODIFICATIONS

Subpart 2943.2—Change Orders

Sec.

2943.205 Contract clauses.

Subpart 2943.3—Forms

2943.301 Use of forms.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2943.2—Change Orders

2943.205 Contract clauses.

HCAs may establish procedures, or office policies, when appropriate for authorizing the contracting officer to vary the 30-day period for submission of adjustment proposals to the clauses prescribed by FAR 43.205.

Subpart 2943.3—Forms

2943.301 Use of forms.

(a) FAR 43.301(a)(1)(vi) requires the use of Standard Form 30 (SF-30) to execute any obligation or deobligation of contract funds after award. The SF-30 also must be used to deobligate funds when effecting contract closeout, when obligated funds exceed the final contract costs. In such an instance, the SF-30 may be issued as an administrative modification on a unilateral basis if the contractor's financial release has been separately obtained.

(b) The contracting officer must include in any unilateral contract modification issued for contract closeout, a statement that the contractor has signed a release of claims and indicate the date the release of claims was signed by the contractor. The SF-30 must also be used to execute purchase order modifications as specified in FAR 13.302-3(b).

PART 2944—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 2944.1—General

Subpart 2944.2—Consent To Subcontract

Sec.

2944.201-1 Consent requirements.

2944.202 Contracting officer's evaluation.

2944.202-2 Considerations.

2944.203 Consent limitations.

Subpart 2944.3—Contractors' Purchasing Systems Reviews

2944.302 Requirements.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2944.1—General

The waiver of consent must be in writing, signed by the contracting officer, and included in the contract file. The waiver must include all supporting facts, including the rationale for waiving the consent to subcontract requirements.